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PREPARED STATEMENT
OF
STANSFIELD TURNER, DIRECTOR OF CENTRAL INTELLIGENCE
ON PROPOSED LEGISLATION TO GOVERN
ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES
BEFORE THE SUBCOMMITTEE ON LEGISLATION
HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE

Thank you, Mr. Chairman and members of this Subcommittee, for your invitation to appear and express my views on proposed legislation governing electronic surveillance for foreign intelligence purposes. Last summer I appeared before the Senate Judiciary Committee and the Senate Select Committee on Intelligence to testify concerning S. 1566, the Senate counterpart of H. R. 7308. At that time I indicated my support for S. 1566, and for the judicial warrant requirement that is a central feature of that bill. I reaffirm that support today, and in the interest of saving time I would like to submit my previous Senate statements for the record, make a few additional remarks, and then proceed to answer any questions you may have.

We are concerned here with activities that have never before been regulated by statute, the whole field of national security surveillance, at least in its foreign intelligence aspects, having been left aside when the Congress enacted the Omnibus Crime Control and Safe Streets Act in 1968. To legislate comprehensively in this field, as H. R. 7308 and S. 1566 seek to do, is a difficult and complex business. To begin with, the foreign intelligence surveillance activities themselves are diverse, as to purpose, as to technique, and most importantly as to degree of threat they pose to the rights of Americans to communicate in private without fear of being overheard

by their Government. Beyond this pattern of factual diversity lie the hard legal and policy issues that have caused such long debate and heated controversy. Who are the permissible targets of this sort of surveillance; what circumstances justify the intrusion, particularly where the communications of Americans are concerned, and what level of proof should be required to demonstrate the existence of those circumstances; how should responsibility be fixed within the executive branch, and to what extent should the approval function be shared with the judicial branch; how long should such surveillance be allowed to continue; how should incidentally acquired information be controlled; and what happens if a party to an intercepted communication subsequently becomes a criminal defendant and demands to know whether he has been overheard, or if the Government seeks to use the fruits of surveillance as affirmative evidence of a criminal offense?

Among the various bills that have been introduced, it seems to me that H. R. 7308 and S. 1566 represent the best and the most careful accommodation of the various interests to be served. On the one hand, unlike H. R. 5632, which has a criminal law orientation, they recognize foreign intelligence surveillance activities for what they are in fact -- namely, means of obtaining necessary information about foreign powers and their agents rather than aids in the detection and prosecution of a crime. Secondly, the provisions of these bills differentiate between the activities that are most likely to result in the acquisition of U. S. person communications, and therefore are most open to abuse and most threatening from a civil liberties standpoint, and those other activities, directed

against official foreign power targets, that present very little likelihood that the privacy of American communications will be invaded or that private information about Americans will be acquired. It is in that regard, for example, that the bills provide for a two-tier warrant procedure, altering the approval and other requirements as between surveillance directed against official foreign power targets and the other permissible targets of surveillance. The distinctions made in this respect, which appear throughout the bills, are crucial and in my opinion mark a real improvement upon S. 3197, the forerunner of S. 1566 in the Senate and the counterpart of H. R. 5794. Additionally, and obviously a matter of key importance, the two bills contain an impressive array of safeguards designed to assure that U. S. persons are not monitored in the exercise of their First Amendment rights or because of legitimate political activities in which they may be engaged, and that no improper use is made of any information about Americans that might be picked up as a surveillance by-product.

I have said before that there are certain risks associated with the statutory approaches reflected in H. R. 7308 and S. 1566. The proliferation of sensitive information always involves risks, and the statutory procedures will unquestionably lead to such a proliferation. But on balance I believe the risks should be accepted, and while compliance will be somewhat onerous, I cannot say that any proper or necessary governmental purposes will be frustrated by these statutes or that vital intelligence information, having such value as to justify electronic surveillance as a method of collection, will be lost.

It should also be undertood, as I am sure it already is by the members of this Subcommittee, that the CIA is not itself involved in the conduct of surveillance

activities that will be authorized by these bills. However, as matters now stand I have a role in the process through which some of these activities are considered within the executive branch and are forwarded to the Attorney General for his approval, and I would expect to assume a comparable role as a certifying officer were this legislation to become law.

In sum, my overall view is that H. R. 7308 and S. 1566 strike the correct balances, and I believe those balances could easily be upset by the substitution of alternate legislative approaches.

PREPARED STATEMENT OF STANSFIELD TURNER, DIRECTOR
OF CENTRAL INTELLIGENCE ON S. 1566

BEFORE THE SUBCOMMITTEE ON INTELLIGENCE AND RIGHTS OF AMERICANS
SENATE SELECT COMMITTEE ON INTELLIGENCE

Mr. Chairman and members of this Subcommittee:

I welcome this opportunity to testify concerning S.1566, the Foreign Intelligence Surveillance Act of 1977. I have previously indicated my support for this important legislation in a prepared statement I presented in June to a subcommittee of the Senate Judiciary Committee. At this time I would like to resubmit that statement, with one change noted on page 2, and add a few remarks concerning issues that you identified, Mr. Chairman, in your letter of 1 July inviting me to appear at this hearing, as being of special interest and concern to the Subcommittee. One of those issues has to do with the provisions in the bill covering the certifications that must be made by executive branch officials in support of warrant applications. The other has to do with the appropriateness of amending the bill so as to bring within its coverage electronic surveillance directed at U. S. persons abroad.

First, as to the certification process, I would expect to be among those officials appointed by the President to make the determinations called for by the bill, regarding the purpose and other aspects of a requested surveillance. Assuming my designation as a certifying authority, I would expect to carry out

my responsibilities in much the same way that I do today in the absence of legislation.

As matters now stand, I chair an interagency panel that reviews certain requests to undertake electronic surveillance against foreign intelligence targets. Representatives of the Secretaries of State and Defense serve as the other members of that panel. Surveillance requests are considered at panel meetings attended by the members and other intelligence community officials. In each case the requests are supported by memoranda that justify the operations in terms of standards that closely resemble the targeting standards set forth in S. 1566. In no case is any request approved except after consideration at a meeting of the panel and except after review of the justification memorandum. During my term of office there has been no occasion in which approval was given to all requests considered at any one time, a point I make to indicate that the process is careful and selective. Approved requests are forwarded to the National Security Adviser to the President, and those that receive his endorsement are in turn forwarded by him to the Attorney General for review and final approval. Each final approval is valid for only 90 days, and consequently the entire review process is repeated at 90-day intervals with respect to each surveillance activity requested for renewal.

Should S. 1566 become law I can assure the Committee that I would continue to devote my personal attention to matters within my authority as a certifying official, and I envision that I would base my certifications on review and approval procedures akin to those that are already in use.

Second, as to the idea of broadening the provisions of the bill so as to make them applicable to electronic surveillance activities conducted abroad, I believe that such a step would be inappropriate and unwise. In my view the circumstances that are relevant to the gathering of foreign intelligence and counterintelligence information abroad, including the acquisition of such information by means of electronic surveillance, are materially different from the circumstances surrounding such activities when conducted in the United States. A critical difference is that activities conducted abroad are heavily dependent on the cooperation of foreign governments and foreign intelligence services, and any enlargement of the scope of the bill to cover such activities could have far-reaching consequences in our relationships with those foreign governments and intelligence services.

In its present form the bill deals comprehensively with a large and complex subject, namely all types of electronic surveillance carried on in the United States that are not already regulated by other legislation. Electronic surveillance abroad is another large and complex subject in itself, and I believe it should be left to separate legislation, which as you know this Administration is now engaged in drafting.

Statement of Admiral Stansfield Turner, Director of Central Intelligence,

At Hearings Before the Subcommittee on Criminal Laws and Procedures

of the Judiciary Committee of the Senate on the Foreign Intelligence

Surveillance Act of 1977 (S. 1566)

14 June 1977

Approved For Release 2004/08/19 : CIA-RDP81M00980R002100080092-0

Mr. Chairman:

Thank you, Mr. Chairman and members of this subcommittee, for your invitation to appear and express my views on S. 1566, the proposed legislation which deals with electronic surveillance undertaken in the United States to obtain foreign intelligence. I have a brief statement that I would like to present and I will then be happy to expand on any particular aspect of my statement or to respond to any other question which may be of interest to the subcommittee.

I support the proposed legislation. I support it because I believe it strikes a fair balance between intelligence needs and privacy interests, both of which are critically important. I support it as well because I believe it will place the activities with which it deals on a solid and reliable legal footing, and thus hopefully bring an end to the uncertainty about the limits of legitimate authority with respect to these activities, and about how, by whom, and under what circumstances that authority can rightfully be exercised. I favor the proposed legislation for additional reasons, not the least of which is my view that its enactment will help to rebuild public confidence in the national intelligence collection effort and in the agencies of Government principally engaged in that effort.

Electronic surveillance is of course an intrusive technique, involving as it does the interception of non-public communications. At the same time it is a necessary technique, and in my opinion a proper one, so far as concerns the gathering of foreign intelligence and counterintelligence within the

United States. The fundamental issue therefore, as I see it, is how to regulate the use of electronic surveillance so as to safeguard against abuse and over-reaching without crippling the ability to acquire information that is vital to the formulation and conduct of foreign policy and to the national defense and the protection of the national security. In part that is a legal issue. In larger part, however, the question is ~~policy~~ one of policy.

As matters now stand, electronic surveillance in the field of foreign intelligence is carried out without judicial warrant, under a written delegation of authority from the President and pursuant to procedures issued by the Attorney General. Under the delegation and the procedures, all surveillance requests must be submitted to the Attorney General. No surveillance may be undertaken without the prior approval of the Attorney General, or the Acting Attorney General, based on his determination that the request satisfies specific criteria relating to the quality of the information sought to be obtained, the means of acquisition, and the character of the target as a foreign power or agent of a foreign power. These criteria closely resemble the standards that would apply, by force of statute, were the proposed legislation to be enacted. Indeed, to the extent I have knowledge of these matters, I am not aware of any electronic surveillance now being conducted for foreign intelligence purposes under circumstances that would not justify the issuance of a judicial warrant were S. 1566 to become law, barring any significant amendments.

I am advised that the present practices conform to all applicable legal requirements, including the requirements of the Fourth Amendment. However, assuming as I do that the President has the constitutional power to authorize warrantless electronic surveillance to gather foreign intelligence, it must still be answered whether the present arrangements, under which the approval authority is reserved to the executive branch, represent the wisest public policy given the privacy values that are at stake and given the potential for the subversion of those values.

The proposed legislation reflects a conclusion that the existing arrangements do not represent the wisest policy and that the power to approve national security electronic surveillance within the United States should be shared with the courts. I accept that conclusion, as does the President, and I accept as well the warrant requirement that is the central feature of the bill. As the Director of Central Intelligence, of course, I am necessarily concerned about the capacity of the U.S. intelligence establishment to collect and provide a flow of accurate and timely foreign intelligence information, and I have a responsibility to prevent the unauthorized disclosure of the sources of that information and the methods by which it is obtained. I have therefore tried to assess what the enactment of S. 1566 might cost in terms of lost intelligence or reduced security. Based on my careful review of the bill, I cannot say to you flatly that there will not be

such costs. It is possible, for example, that the bill's definitions of foreign intelligence information will prove to be too narrow, or will be too narrowly construed, to permit the acquisition of genuinely significant communications. It is likewise possible that justified warrant applications will be denied, or that the application papers will be mishandled and compromised. These possibilities are difficult to measure, but they are risks. In the end, however, I think they are risks worth taking. The fact of the matter is that we are already paying a price, equally difficult to measure but nonetheless real, in terms of public suspicions and perceptions that surround the present arrangements. A release from these burdens of mistrust is itself a consideration that argues in favor of the bill. In addition, as I read the bill, specifically sections 2523(c) and 2525(b), the Director of Central Intelligence will have a role in determining the security procedures that will apply to the warrant application papers and the records of any resulting surveillance, and that is a responsibility to which I intend to devote serious attention.

As the subcommittee knows, much of the information that is likely to be obtained from electronic surveillance covered by this bill will not relate, even incidentally, to U.S. persons, with whose privacy rights the bill is specially concerned. Even so, an assurance that all such activity within the United States is conducted lawfully, under rigid controls, and with

full accountability for the action taken, whether or not it impinges in any way on the communications of U.S. persons, would be a major step forward, and in my estimation this bill will provide that assurance.

In sum, I regard the proposed legislation as desirable and urge its early consideration and adoption.